

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REGINALD HERBIN,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

22-CV-5890 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is currently detained at the Anna M. Kross Center on Rikers Island, filed this action *pro se*. On December 7, 2022, the Court dismissed the complaint, and on December 9, 2022, judgment was entered.¹ On January 13, 2023, the Court received Plaintiff's notice of appeal, together with a motion for an extension of time to appeal.² (ECF 10-11.)

The Court denies Plaintiff's motion for an extension of time to file a notice of appeal. A litigant has thirty days from entry of the order or judgment he wishes to challenge to file a notice of appeal. Fed. R. App. P. 4(a)(1)(A). The Court entered judgment dismissing this action on December 9, 2022, and the Court received the notice of appeal 35 days later, on January 13, 2023. Under the "prison mailbox rule," however, the notice of appeal is deemed filed on the date a prisoner gives it to prison officials for mailing. *See, e.g., Walker v. Jastremski*, 430 F.3d 560, 562-64 (2d Cir. 2005) (discussing prison-mailbox rule). Plaintiff asserts that on December 31, 2022, he handed the notice of appeal to prison officials for mailing. (*See* ECF 11, at 2.) Because

¹ On January 20, 2023, the Court vacated the December 7, 2022, order of dismissal and judgment. (ECF 13.)

² On January 17, 2023, the court transmitted the notice of appeal to the United States Court of Appeals for the Second Circuit.

Plaintiff's appeal was filed within the 30-day deadline, the Court denies Plaintiff's motion for an extension of time to appeal as unnecessary.

CONCLUSION

Plaintiff's motion for an extension of time to appeal (ECF 10) is denied as unnecessary.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: January 25, 2023
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge